

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 98-0045P.LOF**

**Penalty Assessment**

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**ISSUE**

**Imposition of Penalty**

**Authority:** IC 6-8.1-10-2.1(d)

Taxpayer protests the imposition of penalty.

**STATEMENT OF FACTS**

Taxpayer is a network marketer of natural food supplements. Taxpayer has no physical presence in Indiana and has no Indiana employees. Taxpayer started collecting Indiana sales/use tax in February 1994 on sales to its Indiana distributors. At the time taxpayer started collecting Indiana sales/use tax it did not obtain an Indiana registered retail merchants certificate. Taxpayer applied for the certificate in August 1997. Taxpayer did not file any sales/use tax returns until August 29, 1997 when it filed sales/use tax returns for the twenty seven months from April 1995 through June 1997. Taxpayer asserts that the reasons for the delinquency was because it purchased a computer software system from Jenkon with the belief that the software system was capable of generating the sales/use tax data necessary to file tax returns in all states it does business in. Unfortunately, the system did not generate the data necessary to file the necessary sales/use tax returns. In April 1995 taxpayer purchased a new software system referred to as 20/21, which in conjunction with a Vertex software system, would provide the necessary data to accurately file tax returns in all states. Due to the complexity of the software systems and the different program languages used by the two systems, it took nearly two and one-half years to get the system fully operational.

Taxpayer points out that it voluntarily and willfully filed and paid the taxes collected once the computer system provided the information necessary for the returns to be filed. Taxpayer also conducted a self audit of its sales/use tax collection procedures for each state and determined that for Indiana tax collections had started in February 1994 and that no tax had been collected and remitted on direct retail sales or on freight charges incurred in shipping the products to its customers. Taxpayer has voluntarily remitted sales/use tax on the direct retail sales and the freight charges.

**DISCUSSION**

The Department is granted the authority to waive penalties upon a showing of reasonable cause. IC 6-8.1-10-2.1(d). The taxpayer has shown reasonable cause.

**FINDING**

The Department finds reasonable cause does exist to waive the penalty associated with the sales and use tax due for the months of February 1994 through June 1997.